

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 772 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

STATE OF GUJARAT

Versus

AJITSINH RAHUBHA JHALA

Appearance:

MR.K.P.RAVAL,ADDL.PUBLIC PROSECUTOR for the Petitioner
MR JIVANLAL G SHAH for the Respondent.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/10/96

ORAL JUDGEMENT

The State of Gujarat through the Deputy Conservator of Forest has filed the present petition challenging the judgment and order passed in Criminal Appeal No.59 of 1986 by the learned Sessions Judge, Surat, whereby the learned Judge modified the order dated 18-8-86 of confiscation of the truck in question passed by the Deputy Conservator of Forest, Vyara and imposed a

penalty of Rs.40,000/- in lieu of the confiscation of the truck. The said order was stayed by this Court initially when the petition came up for hearing as to admission on 30-8-88. However, the respondent filed an application being Miscellaneous Criminal Application No.2037 of 1989 for vacating and/or modifying the interim order. This Court (Coram:N.B.Patel,J.,as he then was) by its order dated 19-9-89 modified the interim order by directing the respondent to pay the penalty amount of Rs.40,000/- to the Deputy Conservator of Forest, Vyara subject to the result of this petition. It was also clarified that on payment being made, the custody of the truck shall remain with the respondent during the pendency of the petition on condition that the respondent shall furnish a personal bond in the sum of Rs.1,50,000/- to the Sessions Court to ensure observance of the condition by him to hand over the truck to the department in case the confiscation order is confirmed. It was further provided in the order that in the event the Deputy Conservator of Forest, Vyara declines to accept the aforesaid amount of Rs.40,000/-, it would be open to the respondent to deposit the same in Sessions Court, Surat and in that case the respondent would give intimation of having made the deposit to the Deputy Conservator of Forests, Vyara.

It is an undisputed fact that when the truck in question being GTJ-5163 belonging to the respondent was intercepted by the Forest Officers on Unai road on 10-12-1985, the truck was loaded with teak wood without any pass or permit and that Prabhatsinh Damuvala of Dholka was driving the truck and the respondent was not present. It is also not in dispute that the wood in question was sold by one Chunilal Bhagubhai Chaudhari of village Andharwadi of Vyara taluka to one Fatehsingh Chaudhari of village Kumbhiya of Vyara taluka who hired the truck with driver Prabhatsinh. In view of these undisputed facts, the Deputy Conservator of Forest, Vyara passed the order of confiscation dated 18-8-86 under section 61A of the Indian Forest Act, 1927.

In the appeal preferred before the Sessions Court, the learned Sessions Judge, Surat, has recorded a finding that although the driver of the truck inquired from the person who hired the truck about the destination to which the goods were to be carried in the truck, that was not sufficient and, in any case, he had not taken reasonable and necessary precautions against the use of the truck for carrying the contraband goods in question. In my opinion, the said finding recorded by the learned Judge is just and proper and I see no reason to interfere with the same.

The learned Judge, however, was of the view that it would be too harsh to confiscate the truck in question as the value of the truck is much more than the goods in question. He, therefore, imposed a fine of Rs.40,000/in lieu of confiscation of the goods. Mr.K.P.Raval, learned Addltional Public Prosecutor, appearing for the petitioner-State has submitted that in view of the fact that the learned Judge has recorded a finding that the offending vehicle had been used in the commission of the offence, the learned Judge ought not to have altered and modified the order of confiscation and substituted the order of penalty of Rs.40,000/-. It is not possible to accede to the submission of Mr. Raval for the simple reason that it is within the discretion of the learned Sessions Judge, as per Section 61-D, to pass such an order as he may think fit confirming, modifying or annulling the order appealed against. Admittedly, the value of the goods in question as held by the learned Sessions Judge is Rs.20,000/- and the value of the truck is much more than the value of the goods. In view of this, I am of the opinion that no order of confiscation of the vehicle can be passed if the value of the contraband goods alleged to have been carried in the vehicle is negligible compared to the value of the vehicle. In any case, once the learned Sessions Judge has exercised the discretion vested in him in favour of the respondent by imposing penalty of Rs.40,000/- and also confiscating the goods in question, I see no reason to interfere with the same in exercise of the power vested in this Court under Articles 226 and 227 of the Constitution of India as this Court does not find the impugned order as illegal or unreasonable.

In the result, the petition fails and is dismissed. Rule is discharged with no order as to costs. The order of furnishing personal bond by the respondent stands vacated.

True copy